

Chapter 10: Individual Needs

A Quality Youth Justice System Responds To Individual Needs

Relevant Terms of Reference

- Programs for education and training, health and wellbeing and rehabilitation
- Through care and aftercare services provided to detainees and CYJ clients.

Relevant Human Rights Standards

- Protection of Family and Children (HR Act s.11, CROC Arts 3, 19)
- Right to Equality (HR Act s.8)
- Rights of Minorities (HR Act s.27)
- Royal Commission into Aboriginal Deaths in Custody
- Access to cultural education (UN Declaration on the Rights of Indigenous Peoples, Art 14)

10.1 What works: responsivity

- 10.1.1 In providing interventions and programs aimed at rehabilitation, the 'what works' literature indicates that to be successful, interventions must be responsive to individual characteristics and needs. The responsivity principle requires that interventions be implemented in a way that is tailored to the learning style of the participant and delivered in a way that maximises change using therapeutic techniques known to work.¹
- 10.1.2 Within the context of youth detention, a range of individual factors including culture, gender, sexuality, age and disability need to be considered in determining the content and delivery of programs and services offered to young people, and the management of young people within the detention environment.
- 10.1.3 This Chapter considers some of the particular needs of Aboriginal and Torres Strait Islander young people, young people from culturally and linguistically diverse backgrounds, young women, gay, lesbian and gender diverse young people, younger offenders (aged 10 to 14), young adults (aged 18 to 21) and young people with a disability or mental illness. It also briefly examines the needs of young people in out of home care. While we refer to each group separately, it is clear that these categories overlap considerably and create layers of complex needs. This Chapter outlines particular challenges in providing responsive interventions for identified categories of young people, and the current practice in ACT youth justice, with a particular focus on the programs and environment at Bimberi Youth Justice Centre (Bimberi).

10.2 Human rights standards

- 10.2.1 Section 8 of the ACT *Human Rights Act 2004* (the HR Act) provides that all people should be treated equally before the law, and everyone should be able to enjoy his or her rights without distinction or discrimination of any kind. The right to equality is further entrenched in ACT law by the ACT *Discrimination Act 1991* (the Discrimination Act) which prohibits unfavourable treatment in specified areas of public life because of a protected attribute, including disability (including health and mental health), race, sex, gender identity or sexuality.
- 10.2.2 Section 27 of the HR Act provides special protection for minority groups. The UN Human Rights Committee has identified the equivalent of this right in the *International Covenant on Civil and Political Rights* (ICCPR) as being distinct from, and in addition to, other human rights.² It also highlights the need for substantive equality, as opposed to mere formal legal equality. Section 27 is aimed at the long-term survival of cultural minorities and recognises the diversity of humanity.

1 D.A. Andrews, Ivan Zinger, Robert Hoge, James Bonta, Paul Gendreau and Francis Cullen, 'Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis.' (1990) 28 *Criminology* 369-404.

2 United Nations Human Rights Committee, *General Comment No. 23: The rights of minorities* (Art. 27) 08/04/1994, para 1.

It is the right of those belonging to a minority group who share a common culture, religion or language to enjoy their own culture, to practise their religion, and speak their language. This right applies to everyone including those who are not citizens or permanent residents and includes an obligation to ensure effective participation of members of minority communities in decisions that affect them. However, such activities are subject to the law of the Territory and may be subject to reasonable limitations that meet the proportionality test of s. 28 of the HR Act.

10.3 Aboriginal and Torres Strait Islander Young People

- 10.3.1 As discussed in Chapter 7 (prevention and diversion), Aboriginal and Torres Strait Islander young people are dramatically over-represented at all levels of the ACT youth justice system. Current diversionary processes have not been equally accessible to Aboriginal and Torres Strait Islander young people, and the extent of over-representation of this group of young people increases at each level of the system, from initial contact with police to incarceration in Bimberi. The Australian Institute of Health and Welfare (AIHW) reported that in 2008-2009 on an average day, seven of 15 (46.6%) of young people in detention in the ACT were Aboriginal or Torres Strait Islander, and that Aboriginal and Torres Strait Islander young people were 35 times more likely to be detained than non-Indigenous young people.³ The Commission understands from discussions with the Community Services Directorate (CSD) that this over-representation of Aboriginal and Torres Strait Islander young people in detention has in fact increased in the ACT since 2009 when these statistics were last collected.
- 10.3.2 Aboriginal and Torres Strait Islander young people in the ACT are at high risk of entry into and further entrenchment in the youth justice system and should be a priority group for targeted prevention and diversion programs, as discussed in Chapter 7, as well as case management and programs in detention. However, to be effective, interventions for Aboriginal and Torres Strait Islander young people must be responsive to their criminogenic and cultural needs.
- 10.3.3 Article 14 of the United Nations Declaration on the Rights of Indigenous Peoples recognises that States must *'in conjunction with Indigenous peoples, take effective measures, in order for Indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.'*⁴
- 10.3.4 The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) in 1991 also made a number of recommendations regarding the needs of Aboriginal and Torres Strait Islander people for particular support and assistance while in custody.

Criminogenic needs

- 10.3.5 Aboriginal and Torres Strait Islander young people often experience multiple disadvantages and share a range of criminogenic risks and needs with other young people, such as family abuse or neglect, cognitive disabilities, mental health issues and drug and alcohol abuse.⁵ Noetic Solutions' *Review of Effective Practice in Juvenile Justice* (Noetic Review) singles out access to alcohol and substance abuse programs as one of the key indicators of effective practice in Aboriginal and Torres Strait Islander youth justice, as alcohol and substance abuse are strongly linked with recidivism.⁶ However, Aboriginal and Torres Strait Islander young people may also have particular criminogenic or holistic needs that are not addressed in mainstream programs. The lower life expectancies and poor health outcomes in Aboriginal and Torres Strait Islander communities mean that Aboriginal and Torres Strait Islander young people are likely to be exposed to significant stresses of bereavement and illness across extended families, in addition to the intergenerational trauma that is the legacy of the recent stolen generation,⁷ as well as historic impacts of colonisation. These young people may also have holistic rehabilitation needs relating to societal alienation and disconnection from culture. Jones argues that in addition to universal criminogenic needs, Aboriginal and Torres Strait Islander people have specific needs which must be considered in programming:
- *'Acculturation/deculturation* (not feeling part of either 'white' culture or Aboriginal culture)
 - *Separation, displacement and abandonment*
 - *Coping with discrimination*
 - *Identity issues and being bicultural*
 - *Reconnecting with spirituality and Aboriginal heritage.*⁸

3 Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2008-09* (2011) 99.

4 2007, endorsed by the Australian Government in 2009.

5 See eg Andrew Day, Kevin Howells and Debra Rickwood, *The Victorian Juvenile Justice Rehabilitation Review*. (2003).

6 Noetic Solutions, *Review of Effective Practice in Juvenile Justice* (2010) 68.

7 Matthew Willis and John Patrick Moore, 'Reintegration of Indigenous Prisoners' (2008) 90 *Australian Institute of Criminology, Research and Public Policy Series*.

8 Robin Jones, 'Indigenous programming in correctional settings, A national and international literature review', (2001), paper presented at the AIC Best Practice Interventions in Corrections for Indigenous People Conference, Sydney, October 2001.

- 10.3.6 In addition, Aboriginal and Torres Strait Islander young people may face higher levels of anxiety and distress in a detention environment than other young people, and may require specific program interventions to assist them to adapt to this environment.⁹ Programs which are informed by this range of needs are thus more likely to be effective at engaging Aboriginal and Torres Strait Islander young people and meeting their holistic rehabilitation needs.
- 10.3.7 The ACT Council of Social Service (ACTCOSS) further notes in its submission the importance for Aboriginal and Torres Strait Islander young people of working with the whole family, not just the young person in isolation: *'This approach has had some good reported outcomes and links in with good practice holistic program delivery. Consideration of family needs to be broad to recognise the range of close and supportive relationships a child or young person may have with people outside of their biological family.'*

Culturally appropriate programs

- 10.3.8 The responsiveness principle requires that programs be delivered in a way that is targeted and effective for participants. For Aboriginal and Torres Strait Islander young people this principle suggests that programs should be culturally appropriate, and should involve the Aboriginal and Torres Strait Islander community in the design and/or delivery of programs.
- 10.3.9 The Noetic Review proposes that:
*'The provision of culturally relevant programs is of utmost importance in effectively addressing Indigenous youth offending. The inclusion of culturally specific elements in youth justice programs helps to reduce the sense of alienation commonly experienced by young Indigenous offenders and conveys a message of respect and community acceptance which in turn tends to improve the responsiveness of young indigenous offenders in reforming their offending behaviours. Culturally relevant programs can also benefit young offenders by providing them with a value system and sense of group identity which they are more likely to embrace and which is more likely to influence their behaviour.'*¹⁰
- 10.3.10 The development and delivery of culturally appropriate programs requires the consultation and involvement of the Aboriginal and Torres Strait Islander community and elders. As well as making programs culturally relevant, this allows young people to form connections with local community organisations, who can provide vital continued support on release. ACTCOSS notes that:
*'It is imperative Aboriginal and Torres Strait Islander communities are consulted in the design of programs in order to ensure programs are going to be appropriate. If robust consultation and design is undertaken programs would significantly reduce levels of young Aboriginal and Torres Strait Islander peoples incarcerated and provide them with opportunities for rehabilitation.'*¹¹
- 10.3.11 It has been suggested that culturally appropriate program delivery may be more experiential, active and varied in its activities than non-Indigenous programs, which tend to be talk-focused. Jones suggests that relevant methods may include:
- *'art projects such as painting*
 - *music, song, poetry*
 - *storytelling and narrative approaches*
 - *talking circles*
 - *drama projects*
 - *dance and movement*
 - *traditional rituals and ceremonies*
 - *meditation, prayer and other spiritual elements*
 - *use of native language.'*¹²
- 10.3.12 Some concerns have been raised over the effectiveness of cognitive behavioural rehabilitation programs for Aboriginal and Torres Strait Islander people. It has been suggested that these methods *'do not encompass Aboriginal people's wisdom and knowledge'*,¹³ and *'tend to emphasise individual factors and de-emphasise contextual or cultural factors'*.¹⁴ Nevertheless, there is strong evidence for the effectiveness of such programs generally in the 'what works' literature, including in cross-cultural contexts in North America.¹⁵ It appears that programs such as anger management programs based on cognitive

9 Jessica Grainger and Geoffrey Troth 'Psychological impact of custody on the Aboriginal adolescent', (2000) 7(1) *Psychiatry, Psychology and Law*, 89-96.

10 Noetic Solutions, *Review of Effective Practice in Juvenile Justice, Report for the Minister for Juvenile Justice NSW* (2010), 68-69.

11 ACTCOSS Submission to this Review.

12 Jones 'Indigenous programming in correctional settings' above n 8.

13 Cheri Yavu-Kama-Harathunian, 'The Therapeutic Needs of Indigenous Violent and Sex Offender Males' (2002), Paper presented to the Probation and Community Corrections Conference, AIC, Perth.

14 Andrew Day, 'Reducing the risk of re-offending in Indigenous offenders: what works for whom?' (2003) 37(2) *Journal of Offender Rehabilitation*, 1-15.

15 Sandra Jo Wilson, Mark Lipsey and Haluk Soydan, 'Are mainstream programs for juvenile delinquency less effective with minority youth than majority youth? A meta analysis of outcome research', (2003), 13 no. 1 *Research on Social Work Practice* 3-26.

behavioural therapy are also helpful for Aboriginal and Torres Strait Islander people.¹⁶ The Commission is not aware of any studies regarding the effectiveness of the Changing Habits and Reaching Targets (CHART) program for Aboriginal and Torres Strait Islander young people, and we note that this program requires the completion of a series of worksheets on offending behaviours, which may not be sufficiently culturally accessible or have an engaging format. The delivery of such programs could be adapted with the involvement of Aboriginal and Torres Strait Islander experts to ensure that they are more culturally relevant.

- 10.3.13 In the Commission's view, while programs for Aboriginal and Torres Strait Islander young people should, as far as possible, be culturally appropriate, they should also be evidence based. These young people should not be denied access to mainstream programs if they best meet their particular criminogenic needs or preferences.
- 10.3.14 While programs within detention are important, it is vital that changes made in detention are supported and continued on release to the community. As Jones notes:
- 'While [continuity] is important for offenders from all ethnic backgrounds, the unique issues for Indigenous offenders suggest the need for continuity between prison programs and community programs is especially acute... Prison-based programs can do the best job in the world and the internal changes an offender has made can all be undone by the external circumstances to which he or she is released.'*¹⁷
- 10.3.15 In working with local Aboriginal and Torres Strait Islander organisations and Elders to develop and deliver culturally appropriate programs, the need for continuing programs and support in the community should be a key factor in program design and funding.

Current practice

- 10.3.16 As discussed in Chapter 9 (programming), a number of vocational and recreational programs are provided for young people at Bimberi but, historically, there has been a lack of an overarching rationale which links programs to the identified criminogenic needs of young people. Gugan Gulwan Youth Aboriginal Corporation (Gugan Gulwan) provides an ongoing Aboriginal and Torres Strait Islander art program at Bimberi. This popular program is offered to young people twice each week as part of the Murrumbidgee Education and Training Centre (METC) school curriculum. The Commission understands that this program focuses on engaging Aboriginal and Torres Strait Islander young people in Aboriginal and Torres Strait Islander art practice and informal dialogue with an Aboriginal rehabilitation support worker.

Promising Practice: The Gugan Gulwan Aboriginal Corporation provides a regular art program which is highly regarded by Aboriginal and Torres Strait Islander young people at Bimberi. A general practitioner from Winnunga Nimmitiyah health service attends the health clinic once each month and staff regularly visit Bimberi to see Aboriginal and Torres Strait Islander young people.

- 10.3.17 A general practitioner from the Aboriginal health service Winnunga Nimmitiyah (Winnunga) attends Bimberi once each month to provide health services as part of the weekly medical clinics. Workers from Winnunga also attend Bimberi on a regular basis to meet with Aboriginal and Torres Strait Islander young people to make connections and to link them to the range of health services provided at Winnunga. However, we understand that these are informal visits rather than a structured program. In addition there have been one-off programs offered as part of the school holiday recreational program, such as the break dancing program Kulture Break.
- 10.3.18 Local Aboriginal and Torres Strait Islander organisations including Gugan Gulwan and Winnunga have expressed concern about the lack of culturally appropriate programs for Aboriginal and Torres Strait Islander young people at Bimberi and noted their interest in becoming more involved in the design and delivery of programs at Bimberi.
- 10.3.19 One Aboriginal young person in Bimberi remarked in interview that:
- 'There is f*** all cultural programs or anything there. There was a NAIDOC week celebration but that was only one day out of the year, there needs to be something weekly so kids can get involved in it and feel that connection and support. The Gugan art program was good. Art and music is what keeps you sane here, it was what got me through.'*
- 10.3.20 The Commission strongly supports the continuation of the Gugan Gulwan art program and regular outreach visits from other Aboriginal and Torres Strait Islander organisations. However, it appears that there is an unmet need for further structured programs to address issues of connection to culture for Aboriginal and Torres Strait Islander young people,

¹⁶ Robyn Gilbert and Anna Wilson, 'Staying strong on the outside: improving the post-release experience of Indigenous young adults', (2009) *Indigenous Justice Clearinghouse Brief*.

¹⁷ Jones, 'Indigenous programming in correctional settings' above n 8.

and for culturally appropriate evidence based programs targeting identified criminogenic needs of these young people, including drug and alcohol, anger management and offending behaviour programs. Local Aboriginal and Torres Strait Islander organisations should be resourced to assist in the development and delivery of these programs.

Recommendation 10.1: The Community Services Directorate work with and resource local Aboriginal and Torres Strait Islander organisations to develop programs addressing specific cultural needs for Aboriginal and Torres Strait Islander young people in Bimberi.

Recommendation 10.2: The Community Services Directorate consult local Aboriginal and Torres Strait Islander organisations regarding programs addressing key criminogenic needs for Aboriginal and Torres Strait Islander young people including drug and alcohol abuse, anger management, and offending behavior, to ensure that these programs are delivered in a way that is culturally appropriate for Aboriginal and Torres Strait Islander young people.

Special needs in detention

- 10.3.21 Incarceration can have a particularly detrimental impact on Aboriginal and Torres Strait Islander young people. Day et al note that:
- '[The] needs of young Indigenous Australians, may differ from other ethnic minority groups, by virtue of the impact of colonisation and the subsequent disintegration of Indigenous cultures within Australia. Applying these models to Indigenous offenders would suggest that special efforts should be made to support Indigenous offenders whilst in custody.'*¹⁸
- 10.3.22 Research indicates that Aboriginal and Torres Strait Islander young people may experience a greater sense of anxiety about custody than non-Indigenous young people. This level of anxiety experienced was found to relate to negative beliefs about custody, and less developed coping skills, with Aboriginal and Torres Strait Islander young people generally having less feeling of control over their circumstances in custody than other young people.¹⁹
- 10.3.23 The RCIADIC made a range of important recommendations in recognition of the particular cultural needs of Aboriginal and Torres Strait Islander people in detention. The recommendations that received the most attention generally related to the accommodation needs of Aboriginal and Torres Strait Islander people in detention, particular in relation to adjoining rooms.²⁰ The RCIADIC also recommended initiatives be directed to providing a more humane environment through introducing share accommodation facilities for community living, and other means should be supported and pursued in accordance with experience and subject to security requirements.
- 10.3.24 There were several other key recommendations, including around support services, as follows:
- *'recognition [be given] to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance.'*²¹
 - *'Aboriginal prisoners should be entitled to receive periodic visits from representatives of Aboriginal organisations, including Aboriginal Legal Services.'*²²
 - *'Aboriginal Welfare Officers [be employed] to assist Aboriginal prisoners, not only with respect to any problems they might be experiencing inside the institution but also in respect of welfare matters extending outside the institution, and that such an officer be located at or frequently visit each institution with a significant Aboriginal population.'*²³
- 10.3.25 Other important RCIADIC recommendations highlighted the need to avoid technological surveillance options (in favour of human ones),²⁴ and the importance of cultural considerations in the design of detention facilities.²⁵

18 Day et al, *Victorian Rehabilitation Review* above n 5, 76.

19 Grainger and Troth 'Psychological impact of custody on the Aboriginal adolescent', above n 9.

20 Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, 329, rec. 144.

21 *Ibid* rec 171.

22 *Ibid* rec 172.

23 *Ibid* rec 173.

24 *Ibid* rec 139.

25 *Ibid* rec 253.

- 10.3.26 Day et al further suggest that the provision of peer-support and liaison officers from Aboriginal and Torres Strait Islander communities represents a reasonable response to the particular needs of Aboriginal and Torres Strait Islander people in custody.²⁶

Current practice

- 10.3.27 The policy framework for Bimberi contains an important recognition of the rights and needs of Aboriginal and Torres Strait Islander young people in custody. The *Children and Young People (Aboriginal and Torres Strait Islander Young Detainees) Policy and Procedures 2008 (No 1)*, specifically requires staff to be mindful of the impact of the policies of child removal in creating a 'stolen generation', and 'the impact that detention and separation can have, including feelings of shame and guilt and disruption to the family unit, that may be associated with being placed in custody or having a family member detained'.
- 10.3.28 The Policy recognises and seeks to implement the recommendations of the RCIADC, including the need to place Aboriginal and/or Torres Strait Islander young detainees with other Aboriginal and/or Torres Strait Islander young detainees, or with another young detainee that they know, wherever possible. The Policy provides that 'the use of conjoining rooms must be positively considered for Aboriginal and/or Torres Strait Islander young detainees on admission to the detention place'.
- 10.3.29 However, in practice, it is not clear that there has been sufficient attention given to the special needs of Aboriginal and Torres Strait Islander young people in detention at Bimberi. The Commission is concerned by reports that in fact conjoined rooms have never been used as intended for Aboriginal and Torres Strait Islander young people, as the doors between cabins have never been opened to allow access between cabins.
- 10.3.30 The use of segregation directions can have particularly negative effects on Aboriginal and Torres Strait Islander young people. As discussed in Chapter 14 (conditions of detention), the Commission is concerned that young people are being held in isolation without access to education or programs. Aboriginal organisations have raised concerns with the Commission regarding the lack of access to visit young people being held on segregation directions.
- 10.3.31 A number of Aboriginal and Torres Strait Islander participants noted the newly created role of an Indigenous Official Visitor at the Alexander Machonochie adult correctional facility, and suggested that there should also be an official visitor for Aboriginal and Torres Strait Islander young people at Bimberi. In the Commission's view this would be an important mechanism for providing accountability in relation to the management of Aboriginal and Torres Strait Islander young people in detention, and monitoring the adherence to the recommendations of the RCIADC. The Commission recommends the creation of an Aboriginal and Torres Strait Islander Official Visitor for Bimberi in Chapter 15 (oversight).
- 10.3.32 As discussed in Chapter 5 (staffing), the Commission is also concerned that the Aboriginal and Torres Strait Islander Youth Liaison Officer position has been vacant at Bimberi since August 2010, and that only one member of 56 permanent staff at Bimberi identifies as being Aboriginal or Torres Strait Islander. One Aboriginal young person who spoke to the Commission noted that 'You need an Aboriginal Elder in there to feel safe and connected to culture. You need more Aboriginal workers there'. In Chapter 5, the Commission recommended that the Aboriginal and Torres Strait Islander Youth Liaison Officer position be filled immediately.
- 10.3.33 The Commission welcomes the commitment in the ACT Government submission that:
'A fulltime Education Indigenous Liaison Officer will be recruited to support Aboriginal and Torres Strait Islander young people move from Bimberi to schooling, training or employment. METC will continue to work with case managers at Bimberi so that the student's pathway plan informs the young person case management plan, particularly the transition component.'
- 10.3.34 An Education Indigenous Liaison Officer could play an important role in providing support for schooling and vocational pathways and creating strong links between education and case management for Aboriginal and Torres Strait Islander young people at Bimberi.

10.4 Young people from culturally and linguistically diverse backgrounds

- 10.4.1 The last census, in 2006, demonstrated that people born overseas make up 22% of the population in the ACT, and 15.2% of Canberrans speak a language other than English at home.²⁷ The available evidence suggests that, in general, migrants have the lowest rates of criminality in Australia, followed by first generation Australians, with the remaining Australian-born population having the highest rates of criminality.²⁸ However, some groups of first generation migrant young people

²⁶ Day et al, *Victorian Rehabilitation Review* above n 5, 76.

²⁷ Australian Bureau of Statistics, National Regional Profile: Australian Capital Territory (2010) available at <http://www.abs.gov.au/AUSSTATS/abs@nrrp.nsf/Latestproducts/8Population/People12005-2009?opendocument&tabname=Summary&prodno=8&issue=2005-2009>.

²⁸ Jenelle Baur, 'Future migration and policing: Examining assumptions', (2006) 5 *Australasian Centre for Policing Research Issues Series*, 3.

have been found to be over-represented in Australian youth justice systems, with young Lebanese, Turkish, Vietnamese, Indo-Chinese, New Zealanders (including Maori), and Pacific Islanders seen to be at particular risk of involvement in youth justice.²⁹ This may in part be due to the disproportionate social disadvantage experienced by these migrant communities in Australia. Young people from new and emerging communities such as Sudanese and Somali migrants may also be at risk of over-policing and subsequent involvement in the youth justice system.³⁰

- 10.4.2 The prevalence of young people from culturally and linguistically diverse (CALD) backgrounds involved in the ACT youth justice system is not readily ascertainable, as data on young people from cultural backgrounds other than Aboriginal or Torres Strait Islander is not collected in an accessible form. Other than the over-representation of Aboriginal and Torres Strait Islander young people at Bimberi, as discussed above, there do not appear to be consistent patterns related to over-representation of particular groups of young people from CALD backgrounds in detention, although at the Quamby youth justice centre at times there were several young people from Pacific Islander backgrounds.³¹

Criminogenic needs

- 10.4.3 Young people from CALD backgrounds may have a range of criminogenic and other needs. As noted by the Office of Multicultural Interests in Western Australia, CALD young people are not a homogenous group and their risks and needs will differ:
- 'Like any other demographic, the needs of CALD young people are diverse ... The needs of newly-arrived CALD young people, for example, are different to the needs of second or third generation CALD young people. Refugee and Humanitarian entrants, and Family Stream entrants, experience different issues from young people who enter with their parents under the Skilled Migration stream. At-risk behaviour associated with CALD young people, furthermore, is not limited to those born outside Australia. Second and third-generation Australians are susceptible to a complex set of issues that often overlap with those of their first-generation peers. These issues include intergenerational conflict and identity issues, as well as risk factors associated with marginalisation and exclusion.'*³²
- 10.4.4 Noetic Solutions noted that some general conclusions can be drawn about the issues facing young people from CALD backgrounds in youth justice generally:
- 'These include language and community barriers (including accessibility to reliable interpreters), difficulties in accessing legal services, inadequate and inappropriately targeted information, problematic relationships with police and inadequate research and evaluation of multicultural issues in juvenile justice.'*³³
- 10.4.5 Young people from CALD backgrounds who become involved in the youth justice system are likely to share a range of criminogenic needs with other young people, such as disconnection from education and employment, and alcohol and other drug use. However they may also have particular criminogenic needs relating to:
- Intergenerational conflict and family breakdown;
 - Acculturative stress/cultural isolation;
 - Racism and discrimination;
 - Exposure to adverse life events/trauma (particularly for humanitarian migrants); and
 - Limited English language proficiency.³⁴
- 10.4.6 CALD young people may experience dissonance between the values and expectations of their Australian peers and the cultural expectations of their families. The process of acculturation has the potential to cause significant intergenerational conflict, which may be exacerbated by the potentially differing speeds at which young people can adapt to a new culture and language compared with older family members. Family dynamics and traditional power structures may become disturbed when parents become dependent on their children to navigate through a new culture, which can cause frustration for both parents and young people.³⁵ Intergenerational conflict may place young people at risk of family violence or family breakdown and homelessness.

29 Ibid 4.

30 Australian Human Rights Commission, *African Australians: human rights and social inclusion issues project. A compendium detailing the outcomes of the community and stakeholder consultations and interviews and public submissions*, (2010) 158,160.

31 See eg Tim Moore, Vicky Saunders & Morag McArthur (2008) *Lost In Transition: Exploring young people's experiences of transition from youth detention in the ACT*.

32 Office of Multicultural Interests, *Not drowning, waving: Culturally and linguistically diverse young people at risk in Western Australia* (2009) 6.

33 Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System*, (2010) 167.

34 Office of Multicultural Interests *Not drowning, waving*, above n 32, 8.

35 Ibid 10.

- 10.4.7 Young people from CALD backgrounds may also be affected by racism and discrimination, which can affect self esteem and identity. As noted in the *Wealth of All Nations* report on refugee young people:

*'Young people experiment with an emerging sense of identity through social interaction and constant feedback from others. When the host society's reaction involves racism or the under-valuing of minority groups, this feedback will be negative or at best contradictory. The ambivalent reception of the host society, combined with possible intergenerational conflict within the family, can result in extremely confusing crosspressures.'*³⁶

- 10.4.8 CALD young people may also experience discrimination in their interactions with police, due to higher visibility and stereotypes regarding ethnic young people congregating in public places. These interactions may place them at risk of greater involvement in the youth justice system. Some CALD young people may not have detailed knowledge of the Australian legal system and unwittingly become involved in offences involving matters such as driving, public transport or public order. The *Wealth of all Nations* report suggests that patterns of over-representation of certain groups of CALD young people in youth justice 'may be indicative of either actual offending patterns or particular policing practices or perhaps a combination of these factors'³⁷
- 10.4.9 CALD young people from refugee backgrounds are likely to have directly experienced trauma, or to be affected by the trauma of family members, which can be both a criminogenic need and a responsivity issue affecting the ability of these young people to develop relationships and to benefit from rehabilitation programs.
- 10.4.10 It has been suggested that protective factors for CALD young people which may mitigate the effect of criminogenic risk factors include access to social services, attachment to the community, participation in church or other community groups, strong cultural identity and ethnic pride, and community/cultural norms against violence.³⁸

Responsive programming and practice

- 10.4.11 Given the apparently small numbers of CALD young people in the ACT youth justice system and in Bimberi it is likely that the diverse cultural needs of these young people will need to be addressed through individual case management, and through linking young people with programs and services in the community, for example through Multicultural Youth Services, which provides a range of support services for migrant and refugee young people, and Companion House, which provides specific support for refugees who have experienced torture or trauma.
- 10.4.12 In addition, it is vital that all youth workers and case managers work with CALD young people in a way that is culturally sensitive and appropriate. Where a young person is not proficient in English, an appropriate interpreter must be arranged to ensure that the young person can participate in case management and programming. Workers should ensure that they develop an understanding of the particular culture of the young person, and be provided with additional training on specific cultures to meet the needs of clients.
- 10.4.13 The *Wealth of Nations Report* suggests that good practice with refugee young people (which may be appropriate for CALD young people more generally) requires an organisational commitment to integrate multiculturalism into practice, and specifically adopting:
- *'A holistic approach to identifying and responding to need;*
 - *Closely supported and managed referrals as part of an integrated service system;*
 - *Flexible and individualised service delivery;*
 - *Active maintenance of cultural appropriateness;*
 - *The involvement of family members and the development of broad community networks; and*
 - *Commitment by front-line staff to developing their cultural knowledge and skill in the supportive context of a 'whole of organisation' commitment to meeting the needs of [CALD] young people.'*³⁹
- 10.4.14 Where possible, the employment of workers from the cultural background of young people in youth justice may be an effective way of providing culturally appropriate support and services. The employment of a number of youth workers from Pacific Islander backgrounds at Bimberi is likely to be a useful source of support for Pacific Islander young people, but needs to be complemented by Islander workers in the community to provide support to families and to assist young people transitioning from custody.

36 Louise Coventry, Carmel Guerra, David MacKenzie and Sarah Pinkney, *Wealth of all Nations, Identification of strategies to assist refugee young people in transition to independence* (2002) 39.

37 Ibid 48.

38 Lorana Bartels, 'Crime prevention programs for culturally and linguistically diverse communities in Australia' (2011), *Australian Institute of Criminology Research in Practice Report No 18*, 4.

39 Coventry et al, *Wealth of all Nations*, above n 36, 93.

- 10.4.15 Involving and supporting families of CALD young people involved in the youth justice system is particularly important, as these families may experience significant challenges in understanding the legal system and the role they can play in supporting their child through the legal process, including any period of detention. In the *Lost in Transition* report, it was noted that young people from Pacific Islander backgrounds in Quamby 'reported that unlike 'back home', family members felt quite disengaged from the process and for cultural and language-based reasons often found it difficult to understand'.⁴⁰ These family members felt disempowered by the ACT youth justice system, which was very different to the justice system in their traditional communities, where offending was seen as both an individual and a community responsibility.
- 10.4.16 Involvement of families is also critical for CALD young people experiencing intergenerational conflict, as interventions will be more effective if they involve families and communities as well as individuals. The Office of Multicultural Interests suggests that '*intensive support is required both for young people who are not coping with their families, and for families and communities, in order for all groups to learn how to deal with the young people in their communities.*'⁴¹
- 10.4.17 In Chapter 5 (staffing) the Commission makes specific recommendations regarding the need for cultural awareness training for youth workers at Bimberi and case workers in Community Youth Justice.

10.5 Young women

- 10.5.1 Young women are considerably less represented at all levels of the ACT youth justice system than young men, although the level of involvement of young women in the youth justice system in the ACT is somewhat higher than in other jurisdictions in Australia. In 2008-2009, young women made up 25% of defendants with matters finalised in the ACT Childrens Court, compared with 20% at national level. At 30 June 2009, 8.5% of young people in detention nationally were female, compared with 33.3% in the ACT, but this disparity reflects the variance in data with very small numbers in the ACT.⁴² In 2008-2009, three young women were detained at Bimberi on an average day, and data provided by the Department shows that numbers of young women have fluctuated between zero and seven since the opening of Bimberi in December 2008.⁴³ The Government Submission notes that it is not an uncommon experience in the ACT to have a single young woman in detention at Bimberi. While young women are statistically at reduced risk of involvement in the youth justice system, the low numbers of young women in the system can create challenges in providing responsive interventions and meeting their needs in the detention environment.

Human rights standards

- 10.5.2 Rule 26 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) provides that '*Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.*'
- 10.5.3 These rights are reflected in the Discrimination Act, which prohibits discrimination on the grounds of sex, but authorises special measures taken to ensure that members of disadvantaged groups have equal opportunities to other people.⁴⁴
- 10.5.4 The human rights audit of Quamby in 2005 (2005 Quamby Audit) noted gender inequalities in the treatment of young people and recommended that female detainees receive the equivalent access to activities and training as males.

Special needs of young women

- 10.5.5 Many studies have found high levels of abuse and experiences of trauma among young women in detention. While there is no available data in the ACT, the NSW *Young People in Custody Health Survey* in 2009 found significant differences by gender for all forms of childhood abuse in the young detainees surveyed. Overall, young women were nearly twice as likely to have experienced any form of abuse as young men (81% vs 43%), and significantly more young women experienced severe childhood abuse or neglect than young men (49% vs 19%). Also eight times more young women reported sexual abuse than young men (39% vs 5%).⁴⁵ It has been suggested that among those who are exposed to trauma, young women

40 Moore et al, *Lost in Transition* (2008), above n 31, 71.

41 Office of Multicultural Interests *Not drowning, waving*, above n 32, 12.

42 Kelly Richards, Australian Institute of Criminology, *Juveniles' contact with the criminal justice system in the ACT: An overview*, (2011), Appendix A.

43 Australian Institute of Health and Welfare, *Juvenile justice in Australia 2008-09* (2011).

44 *Discrimination Act 1991* (ACT), s 27.

45 Devon Indig, Claudia Vecchiato, Leigh Haysom, Rodney Beilby, Julie Carter, Una Champion, Claire Gaskin, Eric Heller, Shalin Kumar, Natalie Mamone, Peter Muir, Paul van den Dolder, and Gilbert Whitton, *2009 NSW Young People in Custody Health Survey: Full Report*. (2011) Justice Health and Juvenile Justice. Sydney.

are more likely than young men to develop mental health problems as a result, and that unresolved trauma may be a criminogenic risk factor associated with alcohol and drug abuse, violence and other offending behaviour. Hennessey et al note that, *'For many of these adolescent females there appears to be a link between the experience of abuse and neglect, the lack of appropriate treatment, and the behaviors that led to arrest.'*⁴⁶

- 10.5.6 The Noetic Review noted the significance of abuse and trauma, among other risk factors for young women, suggesting that: *'Some of the challenges faced by young women in custody include a low socioeconomic background, poor engagement in education, a history of sexual and physical abuse and violence, neglect and/or trauma and homelessness. These risk factors generally lead to a tendency to put themselves in high risk situations. It is known that young women's offending behaviour is often related to this history and behaviour patterns, and is particularly related to substance abuse, with a large proportion of young women entering the juvenile justice system on drug-related charges.'*⁴⁷
- 10.5.7 The NSW *Young People in Custody Health Survey* supports the link between experiences of abuse and mental health issues for young women in detention, finding that young women in the 2009 sample were more than twice as likely as young men to have a diagnosis of post traumatic stress disorder (PTSD) (39% vs 17%), and to experience high levels of psychological distress (55% vs 24%). The survey also found higher levels of self harming behaviour and suicidal ideation among young women, and the authors note that: *'This finding is in keeping with data from other studies... that have shown increased numbers of female offenders presenting with psychiatric disorders and higher rates of self-harm, demonstrating the need for effective screening and provision of support for this vulnerable group.'*⁴⁸
- 10.5.8 Young women in detention are thus likely to have particular need for mental health support and programs that address the connection between trauma and offending behaviour. Day et al note that while there is a lack of research regarding gender-specific risk factors for young women, *'Applying the "what works" model to this group would suggest that particular consideration be given to the following areas of need: mental health, and support for survivors of abuse, substance use programs, and programs relating to peers.'*⁴⁹
- 10.5.9 Young women in custody are also likely to need assistance to navigate relationships with families and partners to reduce further victimisation, and to assist them to develop positive parenting skills to address intergenerational cycles of abuse. Hennessey et al argue that: *'Connection with others is a central organising feature of development in girls. Likewise, much of the trauma they face is interpersonal and relational in nature. Juvenile justice programs must help girls address complex and conflictual relationships with family members, boyfriends, and children. They should help girls negotiate gender and family roles, determine appropriate boundaries in relationships, and avoid conflict and violence in dating relationships. Programs should also assist girls to learn appropriate coping strategies and constructively explore and resolve their feelings.'*⁵⁰
- 10.5.10 Hennessey et al further suggest that treatment models for young women in custody should provide: *'developmentally reparative experiences that address not only PTSD but also issues of identity, trust, safety, body image, physical self care, affect regulation, peer group selection and engagement, and sexuality. Programs should screen for and address issues related to physical and sexual violence, HIV/AIDS, pregnancy, and drug and alcohol dependency.'*⁵¹
- 10.5.11 There is some contention as to whether gender specific programming is the best way to address identified needs of young women.⁵² Kempf-Leonard and Sample argue that although rates of abuse are higher for young women in detention, young men are also victims of abuse and require the same forms of mental health support. These authors contend that many of the qualities argued to be desirable in gender specific programs are actually features of good rehabilitation programs generally: *'Ideally, programs operate with well-trained staff members who serve as effective mentors, with a case-management plan, and with appreciation for cultural and gender diversities. Programs should be delivered in places where youths are safe and feel comfortable – probably with empathetic counselors and in sex-segregated locations, but not necessarily in geographically distinct facilities. Without exception, these gender-specific recommendations are identical to the components advocated more generally for effective youth programs.'*⁵³

46 Marianne Hennessey, Julian Ford, Karen Mahoney, Susan Ko and Christine Siegfried (2004), *Trauma among Girls in the Juvenile Justice System, Report of the National Child Traumatic Stress Network Juvenile Justice Working Group*, 4.

47 Noetic Solutions, *A Strategic Review of the NSW Juvenile Justice System* (2010) 166.

48 Indig et al, *2009 NSW Young People in Custody Health Survey*, above n. 45, 150.

49 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, 48.

50 Hennessey et al, *Trauma among Girls in the Juvenile Justice System*, above n 46, 4.

51 Ibid.

52 Kimberley Kempf-Leonard and Lisa Sample, 'Disparity based on sex: Is gender specific treatment warranted?' (2000) 17: 1 *Justice Quarterly*, 89-128.

53 Ibid 118.

- 10.5.12 Underlying these critiques of gender-specific programming is the practical concern that separation of programming may reduce the access of young women to mainstream programming for young men, which caters for larger numbers and is thus usually better resourced. Belknap et al note that gender specific programming may limit options for young women in practice:

*'Much of the variation in treatment and programming appears to be a result of administrators' and professional adherence to stereotyped gender roles. In general, the girls perceive the boys as getting more privileges, more space, more equipment and better treatment. For example, girls believe that boys have more educational, recreational and occupational opportunities.'*⁵⁴

- 10.5.13 As discussed below, the Commission considers that in practice, particularly in a small jurisdiction, young women may be best served by having equal access to mainstream programs, and in addition, being provided with gender-specific programs to meet specific content and responsiveness needs.

Current practice

- 10.5.14 Bimberi is used as a detention facility for both young women and young men in the ACT. However, the numbers of young women are very small compared to young men. As one submission noted, *'Female residents at Bimberi continue to be young women in a young men's facility.'*⁵⁵ The Government Submission notes that:

'Unlike other jurisdictions that have separate facilities for male and female young people in detention, the ACT has only one facility. The number of female young people in detention often represents a small proportion of the overall population. The needs of female young people are often different to those of young males. Ensuring that the needs of young women are met and there is equitable access to facilities can be challenging given their small numbers.'

- 10.5.15 Young women are usually accommodated in a unit separate from young men, but may be accommodated in the same unit where they would otherwise be isolated. Young men and young women may mix during the day in education and recreational programs. As discussed in Chapter 13 (health), mental health services are provided on an individual basis at Bimberi, and some group programs are being developed. The Commission is not aware of ongoing rehabilitation-focused programs provided to young women on a gender-specific basis, although there have been a number of short term recreational programs designed to cater for particular interests of young women at Bimberi which were not being met in the mainstream programs.

- 10.5.16 Issues of gender equity at Bimberi were raised by both the young women and the young men who spoke to the Commission. Young women generally favoured greater mixing with young men, and wanted to participate in team sports and activities with young men (as it was not possible to play team sport with the small numbers of young women at Bimberi). Young women considered that their access to some facilities like table tennis and Xbox equipment was unfavourable. Conversely, in surveys and interviews conducted by the Commission, a number of young men at Bimberi expressed concern over what they perceived as more favourable treatment of young women in the application of behaviour management processes, and some were resentful of the short term recreational programs, eg craft and Zumba dancing provided for young women. A number of participants raised concerns that romantic relationships between young men and young women in custody led to conflict and jealousies among young people at Bimberi, and that young women were subjected to inappropriate sexual comments and harassment from young men. Some suggested that young women should not be held in the same facility as young men or should be completely segregated within the facility.

- 10.5.17 In the Commission's view the very small number of young women in custody in the ACT places them at a structural disadvantage compared to young men in terms of available resources for programming and services to meet their needs within the facility. In this environment it is not possible to offer young women a complete range of gender-specific education, rehabilitation and recreational programs equal to the range of programs available to young men. Within these constraints, the current model of shared education and gender neutral programming gives young women access to a greater range of opportunities, which would be lost if young women were to be separated completely from young men. We understand that this continues to be the model supported by CSD. In accordance with equality and non-discrimination rights, young women should generally be provided access on an equal basis to all of the recreational and vocational programs and facilities available to young men in custody (and in youth justice more broadly), and these programs should be designed to meet the needs and interests of all young people at Bimberi, as far as possible. In the Commission's view, although gender relations can be challenging at Bimberi, the mixing of young men and young women in this controlled environment could provide an opportunity for staff to model and support respectful gender relationships.

⁵⁴ Joanne Belknap, Melissa Dunn and Kristi Holsinger, *Moving towards Juvenile Justice and Youth-Serving Systems that address the distinct experience of the adolescent female* (1997) Technical Report, Gender specific Service Work Group, Cincinnati.

⁵⁵ Women's Centre for Health Matters Inc. and ACT Women and Prisons Group, Joint submission to this Review (2011).

- 10.5.18 Nevertheless, the Commission considers that there is a need for gender-specific programs to meet particular needs of young women at Bimberi. The joint submission of the Women's Centre for Health Matters Inc and the ACT Women and Prisons Group notes that: *'There are also no programs, except for art classes, that work with young women in a therapeutic way to address relationship, self-esteem and other issues.'*⁵⁶
- 10.5.19 Individualised mental health services and counselling support should be provided for both young women and young men who have been victims of abuse and trauma, but therapeutic groups dealing with issues of trauma and abuse may be more appropriately sex-segregated. In the Commission's view the particular needs and issues of young women in custody should be addressed through gender-specific programs on issues including body image, physical self care, sexuality, and respectful relationships with peers, family, partners and children. Young women should be consulted on their needs and preferences for specific programming.

Recommendation 10.3: The Community Services Directorate develop evidence based programs for young women at Bimberi to meet their specific needs on issues including body image, physical self care, sexuality, and respectful relationships with peers, family, partners and children. Young women should be consulted on their needs and preferences for specific programming.

- 10.5.20 In addition to program needs, the prevalence of abuse and trauma among young women in detention has implications for their management, and the use of procedures such as force, restraint, segregation and searching. As Hennessy et al note: *'Girls in juvenile justice settings who have trauma histories need to feel physically and psychologically safe. Many characteristics of the detention environment (seclusion, staff insensitivity, loss of privacy) can exacerbate negative feelings and feelings of loss of control among girls, resulting in suicide attempts and self-mutilation. The traditional methods of preserving order and asserting authority in these centers (especially "tough" physically confrontational approaches and the use of isolation and restraints) may backfire with female detainees who suffer from PTSD. In fact, for females with PTSD the detention experience may result in re-traumatization and/or re-victimization.'*⁵⁷
- 10.5.21 These issues are discussed in more detail in Chapter 14 (human rights). In that Chapter the Commission makes a number of recommendations to improve the practice of use of force and restraint, segregation and strip searching at Bimberi, and the need to involve mental health professionals in decisions relating to behaviour management of young people who are affected by trauma and other mental health issues.

10.6 Gay, lesbian, bisexual, transgender and intersex young people

- 10.6.1 Gay, lesbian, transgendered, bisexual and intersex (GLBTI) young people may be at increased risk of involvement in the youth justice system and may also be particularly vulnerable within the system. The Commission recognises that the spectrum of GLBTI young people is broad, covering same sex attracted young people and young people with diverse gender identities. We acknowledge that their experiences and interests cannot be assumed to be the same, however, all may be at increased risk of prejudice and discrimination within the youth justice system.
- 10.6.2 Australian studies suggest that young people who identify as having sexual attractions that are not exclusively heterosexual make up approximately 10% of the broad youth population.⁵⁸ In self reporting studies in youth justice, only 2% of young men identify as being same sex attracted, while 13% of young women do.⁵⁹ However, a number of commentators have argued that these are under-representations (particularly among young men) and that the percentage of GLBTI young people who are incarcerated most likely mirrors or is greater than that in the general population.
- 10.6.3 This proposed over-representation of same sex attracted young people has been explained by higher reported rates of surveillance and harassment from police, due to overt expression of gay or lesbian sexuality and alleged underlying homophobic attitudes present in the police, youth justice and court systems.⁶⁰ One US study, for example, found that young gay and lesbian people were *'about 40 percent more likely than other teens to be punished by school authorities, police and the courts.'*

56 Ibid. This submission notes that one example of a targeted program for young women in detention is the 'Lift Us Up, Don't Lock Us Down' program curriculum available from the Centre for Young Women's Development in the US <<http://www.cywd.org/gdap.html>>.

57 Hennessey et al *Trauma among Girls in the Juvenile Justice System*, above n 46. 5

58 Anthony Smith, Paul Agius, Anne Mitchell, Catherine Barrett and Marian Pitts *Report of the findings from the 4th National Survey of Australian Secondary Students, HIV/AIDS and Sexual Health*, (2009) La Trobe University, Melbourne.

59 Dianna Kenny, Paul Nelson, Istvan Schreiner, Christopher Jennings, Tony Butler, *Young Offenders on Community Orders: Health, Welfare and Criminogenic Needs* (2008).

60 Angela Dwyer, 'Visibly Invisible: Policing queer young people as a research gap'; (2007) Paper presented to the TASA Conference 4-7 December 2007 Auckland, New Zealand.

10.6.4 Due to the way that GLBTI young people may be mistreated by their families, schools and communities, many experience higher rates of psychosocial difficulties than others: they are more likely to attempt and complete suicide, abuse substances, leave school early, have physical and mental health problems and experience homelessness. As Curtin notes, *'it must be understood that [same sex attracted] youth are not inherently weaker psychologically than are their heterosexual peers; the majority of lesbian, gay and bisexual youth are well adjusted and resilient'*,⁶¹ but that they experience more difficulties and challenges than others. As Brown notes:

*'Young people who are same-sex attracted... experience victimisation, harassment and abuse because of their sexual identity. Those who are open about their sexuality frequently experience abuse and rejection by family and friends. Consequently they do not feel safe about 'coming-out' [and] instead prefer to keep their feelings hidden. This silence can lead to self-harming behaviours including substance abuse, indiscriminate and unsafe sexual practices, running away and even suicide. Community ignorance, prejudice and discrimination are key contributing factors to the ongoing invisibility and isolation of [same-sex attracted youth].'*⁶²

10.6.5 The challenges for GLBTI young people who are 'out' in youth detention have been broadly identified. A number of studies have shown that these young people are treated differently: they are often not allowed to show affection to others in a way accepted for other young people, may be punished more harshly if they are caught having sexual contact, are often isolated from other members of the same sex (by not being allowed to room, shower or change together in institutions where this is the norm) and may not be allowed to overtly display their sexuality or gender identity.⁶³ Young GLBTI people in youth detention also report higher rates of discrimination and harassment, physical, emotional and sexual abuse and bullying.

10.6.6 The *Children and Young People Act 2008* is generally silent regarding same sex attracted young people, but provides specifically for transgender and intersex young people in detention to determine the sex they choose to be identified with.⁶⁴ The sex they select is regarded as their sex for all procedures in detention (there is a similar policy for adults at AMC), so that, for example, a young transgender woman who chooses to be identified as female would be treated as female for the purposes of strip searching procedures and classification. This is an important protection for transgender and intersex young people because it does not impose medicalised or surgical criteria for recognition of gender identity.

10.6.7 Nevertheless, in a number of forums, stakeholders raised concerns about the capacity of Bimberi to adequately support and protect young people who identified as being gay, lesbian, bisexual, transgender or intersex. There was a view that staff were not adequately trained to deal with discrimination or harassment levelled at GLBTI young people and that there have been instances where young people were physically and verbally bullied by other young people and were not sufficiently protected by staff.

10.6.8 The Commission is aware that issues of homophobia and transphobia are prevalent in many schools, workplaces and other institutions and that existing educational and training programs focusing on diversity, bullying and harassment might be implemented at Bimberi to provide workers with better strategies for curbing homophobic and transphobic behaviours and creating a safe environment for all young people and staff.

10.6.9 In her article on young lesbian women in youth detention, Curtin makes a number of recommendations:

*'Much should be done to change this system's institutional culture of homophobia. Staff training around these issues is needed and staff diversity should be broadened to include openly lesbian, gay and bisexual people and their allies. Group programming, materials, and school curriculum in the juvenile hall must include discussion of lesbian, gay and bisexual issues. Continuous structured conversations with lesbian and bisexual girls about their experience in this system is needed to monitor and optimise changes. Finally, greater access to counselling, accurate and unbiased materials, and lesbian, gay and bisexual support groups are needed.'*⁶⁵

10.6.10 To create a climate of nonviolence and respect for all residents and ensure the safe integration of GLBTI youth into their facilities, Majd et al argue that staff should:

- Adopt policies that prohibit discrimination and harassment based on sexual orientation or gender identity.
- Affirm and model the principle that every person is entitled to respect and dignity and that disrespect and intolerance of any kind is prohibited.

61 Mary Curtin 'Lesbian and Bisexual Girls in the Juvenile Justice System' (2002) 19(4) *Child and Adolescent Social Work Journal* 285-301.

62 Rhonda Brown, 'Self-harm and suicide risk for same-sex attracted young people: a family perspective', (2002) 1(1), *Australian e-Journal for the Advancement of Mental Health*.

63 For example, girls being disallowed from shaving their heads, boys wearing makeup or wearing clothing usually attributed to those of the opposite sex: Curtin, 'Lesbian and Bisexual Girls in the Juvenile Justice System', above n 60; National Center for Lesbian Rights, *LGBTQ Youth in the Juvenile Justice System* (2006): San Francisco.

64 *Children and Young People Act 2008* (ACT) s.189.

65 Curtin 'Lesbian and Bisexual Girls in the Juvenile Justice System', above n 60.

- Closely supervise youth and maximise opportunities for interaction with staff.
- Provide a range of supportive and programmatic services that meet the needs of individual youth and keep them engaged in meaningful activities.
- Take swift action to stop bias or harassment on the basis of sexual orientation or gender identity or gender expression when it occurs and address the underlying issues.
- Provide diversity training for all youth in the facility. Make available reading material that includes positive images of youth from different backgrounds and fosters acceptance and appreciation of diversity.
- Develop activities and educational programs to celebrate the history, achievements, and struggles of historically marginalised communities (such as communities of color, women, and LGBT individuals.)
- Create an orientation video that celebrates diversity and describes the harms that result from name-calling, bullying, and harassment.⁶⁶

10.6.11 The Commission recognises that ACT Health identifies GLBTI young people in their *Children and Young People's Youth Justice Health Plan 2008-12* as a group with specific needs, but that it does not provide particular guidance about what these needs are or how they might be met within the youth justice context.

10.6.12 In Chapter 5 (staffing), the Commission recommends that all staff be trained on issues of diversity and non discrimination, including issues of homophobia and transphobia.

10.7 Age and development

10.7.1 In the ACT young people may be held criminally responsible for their actions from 10 years of age, and may remain within the youth justice system beyond the age of 18 for offences committed before they reached adulthood. Young people at Bimberi may thus range in age from 10 to 21 years, covering a significant span of development and maturity, from late childhood, through adolescence to early adulthood. The differing criminogenic and responsivity needs of this diverse group of young people must be considered in the design and delivery of programs and services for young people at Bimberi. In this section we consider the increased vulnerability and level of risk of young people in the lower age range of 10 to 14 years, and the transitional needs young adults aged 18 to 21, who may not be adequately catered for by mainstream programming.

Young people 10-14

10.7.2 As discussed in Chapter 7 (prevention and diversion), there is strong evidence that for most young people, treatment in the community is more effective than detention in achieving rehabilitation.⁶⁷ The Commission has serious concerns over the use of detention for young people under 15 years of age. It is of particular concern that children as young as 10 years old could be held at Bimberi. In the 2005 Quamby Audit, the Human Rights and Discrimination Commissioner recommended that the ACT Government should consider reviewing and raising the age of criminal responsibility to 12 years old in the ACT. The Commission remains of the view that the age of criminal responsibility should be increased. While the *Convention on the Rights of the Child* does not specify any particular minimum age of criminal responsibility, the general approach of the Committee on the Rights of the Child has been to criticise jurisdictions in which the minimum age is 12 or less. Section 22(3) of the HR Act provides that '[a] child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation'. As the 2005 Quamby Audit noted, 'It is questionable whether a detention facility is the most appropriate place for children aged 10 or 11 years.'⁶⁸

10.7.3 Statistics provided by CSD indicate that between January 2008 and May 2011 there were no 10 or 11 year old people in Bimberi. During the same period, there were 21 12 years olds, all of whom were on remand.

10.7.4 Young people who are committing serious or multiple offences when aged 14 years or under are at higher risk of entrenchment in the youth justice system than young people who enter the youth justice system later in adolescence. Early onset of serious (particularly violent) offending is considered a risk factor for persistent life course offending.⁶⁹ While many young people experiment with offending behaviour during adolescence, most do not go on to be adult offenders. Moffitt notes that, 'A very large group participates in antisocial behavior during adolescence. A much smaller group continues serious

66 Katayoon Majd, Jody Marksamer Carolyn Reyes, *Hidden Injustice Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009) http://www.equityproject.org/pdfs/hidden_injustice.pdf.

67 The meta-analysis of Lipsey et al suggests that community-based programs are more effective in reducing recidivism amongst young offenders than incarceration: Mark Lipsey, Thomas Cook, Harris Cooper, David Cordray, Heidi Hartmann, Larry Hedges, Richard Light, Louis Thomas, Frederick Mosteller, 'Juvenile delinquency treatment: A meta-analytic inquiry into the variability of effects' (1992) *Metaanalysis for explanation A casebook*, Russell Sage Foundation.

68 ACT Human Rights and Discrimination Commissioner, *Human Rights Audit of the Quamby Youth Justice Centre* (2005) 20.

69 Terrie Moffitt 'Adolescent-limited and life-course persistent antisocial behavior: A developmental taxonomy.' (1993) *100 Psychological Review*, 647-701.

*antisocial behavior throughout adulthood, and is the same group whose antisocial behavior was stable across the years from early childhood.*⁷⁰ A pattern of serious early offending may reflect a combination of biological pre-disposition and risk factors in a young person's environment, where *'children's neuropsychological problems interact cumulatively with their criminogenic environments across development, culminating in a pathological personality'*⁷¹ However, there is evidence that the trajectories of these young people can be altered by increasing protective factors in their environment.⁷²

- 10.7.5 The 'what works' literature clearly indicates that younger offenders can be kept from becoming life persistent offenders if targeted and intensive supports are provided early. Accordingly, younger detainees should be a priority group for intensive intervention while in detention. While this group is at high risk of further offending, there is also evidence to suggest that well designed and delivered rehabilitation programs addressing criminogenic needs can be very effective in reducing subsequent offending for young people under 15 years.⁷³ Day et al note that, *'It has also been argued that the "major biopsychosocial changes of adolescence make this a developmental period in which intervention can have especially lasting impact."*⁷⁴
- 10.7.6 However, it is not clear that the standard cognitive-behavioural programs such as the CHART program are sufficiently adapted for young people aged 10 to 14 years. Day et al note that:
*'Many of the most effective offender rehabilitation programs... employ cognitive-behavioural methods, which tend to rely upon adult learning principles. Although these methods have been successfully employed with young people and children, consideration needs to be given to the extent to which the youngest age group (10-14 years) might be reasonably expected to engage with these methods... There is clearly a need to ensure that program content and style of delivery of programs originally designed for adults are changed in order to ensure the engagement of younger people.'*⁷⁵
- 10.7.7 Where standard programs are used for this younger cohort, case managers implementing these programs may require further training to successfully adapt their delivery of the program to be engaging and developmentally appropriate for this group.
- 10.7.8 Younger detainees may also be at greater risk of violence or negative influence from older detainees in detention. Some young people who participated in the Review noted their concerns for the safety and welfare of very young detainees at Bimberi, particularly when they are first admitted. While the Commission considers that youth detention will very rarely be the best rehabilitation option for the youngest cohort, in general, the Commission is satisfied that younger detainees are separated from older detainees at Bimberi and that these risks are managed appropriately. Issues of classification and placement are discussed in more detail in Chapter 14 (conditions of detention).

Young adults

- 10.7.9 Data from the Government Submission indicates numbers of young adults at Bimberi have fluctuated between one and five from commencement in December 2008. In December 2010 there were five young men at Bimberi aged 18 years and above, and no young women in this age group.
- 10.7.10 Young adults over 18 years who remain in the youth justice system also have specific responsivity needs. Many young people report increased motivation to address offending behaviour before they enter the adult correctional system. In the Commission's survey one young person commented that it is *'annoying to have someone trying to help when you aren't ready... Most kids have more motivation when they get to 18'*. This theme was also reported in the *Lost in Transition* report, where young people:
*'[T]alked about how they had changed their attitudes to crime and that this was because they had become more mature over time. For some, this was a natural thing while others felt that their looming eighteenth birthdays and the knowledge that they would be transitioned into the adult facilities if they committed further crime was the major incentive.'*⁷⁶
- 10.7.11 Early adulthood is a critical time for interventions to address offending behaviour to avoid entrenchment into the adult

70 Ibid 678-679.

71 Ibid 674.

72 Jane Sprott, Jennifer Jenkins and Anthony Doob, *Early Offending: Understanding the Risk and Protective Factors of Delinquency, Research paper of the Applied Research Branch of Strategic Policy, Human Resources Development, Canada*, (2000) at 26. In this longitudinal study Sprott et al found that for young people who showed high levels of aggression in childhood, attachment to education reduced their risk of involvement in violent crime.

73 Charles Cleland, Frank Pearson, Douglas Lipton and Dorline Yee, 'Does age make a difference? A meta-analytic approach to reductions in criminal offending for juveniles and adults', (1997) Paper presented at the annual meeting of the American Society of Criminology, San Diego.

74 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, citing John Weiss and Kristin Hawley, 'Developmental factors in the treatment of adolescents' (2002) 70 *Journal of Consulting and Clinical Psychology*, 21-43.

75 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, 62.

76 Moore et al, *Lost in Transition*, above n 31, 146.

correctional system. However, interventions must respond to the developmental needs of young adults. Day et al note that in transitioning to adulthood, young people are on the brink of two major life transitions, forming intimate relationships and finding employment, and that these are the major factors that influence whether an older adolescent is likely to progress to adult criminality. They note that:

‘Clearly these are developmentally-specific tasks that are likely to require specialist interventions. . . Rehabilitation interventions may also need to be delivered in ways that are developmentally-appropriate in order to be responsive, for example, to take account of life stage issues such as forming intimate relationships, autonomy from family, work transitions.’⁷⁷

- 10.7.12 The Commission considers that every effort should be made to provide support and intervention to young adults at this critical transitional phase, and that specific programs are required to address the developmental needs of young adults at Bimberi.
- 10.7.13 In Chapter 14 (conditions of detention), the Commission reviews the practices and decision-making regarding the transfer of young adults to adult correctional facilities to complete sentences imposed on them as young people. In the Commission’s view these serious decisions are made without sufficient transparency, and without adequate transition planning to ensure continuity in case management and rehabilitation. The Commission is also concerned that the uncertainty surrounding the possibility of a transfer is unsettling to young adults at Bimberi and can undermine serious rehabilitation efforts in this period.
- 10.7.14 While there is a need to carefully manage risks posed by young adults to younger cohorts at Bimberi, the Commission considers that in most cases it will be preferable for intensive interventions to be provided within the Bimberi environment during this critical developmental period, with a view to avoiding a young person transitioning to the adult correctional facility wherever possible.

Recommendation 10.4: The Community Services Directorate review and enhance rehabilitation programs provided at Bimberi to ensure that appropriate evidence based programs are developed to meet the criminogenic and developmental needs of young people 10-14 and young adults 18-21 years old.

Recommendation 10.5: The ACT Government review the age of criminal responsibility and consider raising this age to 12 years old in the ACT.

10.8 Young people with disabilities

- 10.8.1 Young people with disabilities are over-represented in the youth justice system, with studies in Australia and abroad suggesting that between 10 and 100%⁷⁸ of young people who are incarcerated have a physical, intellectual or learning disability, or have a mental health issue. In fact the rates of incarceration of young people with disabilities are so high that Quinn et al make the observation that:
- ‘The prevalence of such disorders among the juvenile justice population, has led some professionals to characterise juvenile justice as a “default system” for youth who can’t read or write well, who have mental health problems, and who drop out or are forced out of school.’⁷⁹*
- 10.8.2 In Australia, the percentage of young people with a disability in custody, particularly those from Aboriginal and Torres Strait Islander backgrounds, is consistently high. NSW Justice Health and Juvenile Justice, for example, found in their 2009 survey of young people in custody that:
- ‘Intellectual ability in the range indicating possible intellectual disability was common. One in five (20%) Aboriginal young people were assessed as having a possible intellectual disability (IQ scores less than 70); a significantly greater proportion than the 7% found for non-Aboriginal young people. One-third (32%) of the young people scored in the borderline range for intellectual ability (IQ 70 to 79); again, a higher proportion of Aboriginal than non-Aboriginal young people were affected (39% vs 26%).’⁸⁰*

⁷⁷ Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5,65.

⁷⁸ Mary Quinn, Robert Rutherford, Peter Leone, David Osher & Jeffrey Poirier ‘Youth with a disabilities in Juvenile Corrections: A national study’ (2005) *Exceptional Children* 71 (3) 339-345.

⁷⁹ *Ibid.*

⁸⁰ Indig et al 2009 *NSW Young People in Custody Health Survey*, above n 45.

10.8.3 The Australian Human Rights Commission (AHRC) notes in its report on Indigenous young people with cognitive disabilities and mental health issues that:

*'there is concern that the incidence of cognitive disability for Indigenous young people is inflated due to culturally inappropriate assessment tools which measure intelligence in a profoundly anglo-centric fashion. Because Indigenous children do not possess the assumed cultural knowledge of the dominant culture, they are disadvantaged in testing and likely to score lower.'*⁸¹

10.8.4 Nevertheless, there is agreement that a disproportionate number of Aboriginal and Torres Strait Islander young people experience cognitive disabilities, because of a range of structural and social inequities in Aboriginal and Torres Strait Islander communities.⁸²

10.8.5 Although statistics on the number of all young people with a disability in the ACT youth justice system are difficult to gather, key stakeholders were of the view that as many as a third had a cognitive impairment, were on the autistic spectrum or suffered from foetal alcohol syndrome. Teachers, in particular, were of the view that learning difficulties were prominent in most of their students and that this influenced their ability to positively engage in the classroom.

10.8.6 The reasons why young people with a disability are over-represented in the youth justice system are wide and varied. Young people with intellectual disabilities often have lower IQs than other young people, are more suggestible and more easily coerced, they often display low impulse control and deficits in social and adaptive behaviour management skills, and are often unable to delay gratification and have anger management difficulties. They are more likely to have dropped out of (or been excluded from) school, to have an alcohol or other drug issue, and to associate with negative peer groups.⁸³ They are also more likely to be caught because they are less likely to be able to conceal their crimes, they are more likely to agree or confess to crimes because they are eager to please and they are often more visible to police and others.⁸⁴

10.8.7 Although over-represented, young people with intellectual disabilities are generally more likely to be minor but repeat offenders or commit a single major violent crime. For the former group, targeted early intervention and diversion programs which take into account the special needs of this group are warranted. The literature suggests that the protective value of connecting young people with intellectual disabilities to education and employment is particularly important.⁸⁵

10.8.8 When incarcerated, young people with disabilities can experience a number of difficulties: they can be discriminated against, experience bullying and generally become isolated from the general population, or conversely, be manipulated and threatened by others.⁸⁶

10.8.9 Managing young people with disabilities in youth justice centres can also be difficult, as can the provision of effective rehabilitative programs. Evaluations have shown that cognitive based programs are not always accessible to young people with intellectual disabilities or cognitive impairments. Targeted supports need to be developed which take into account young people's capacity to develop skills and change attitudes, their learning needs, and their preferred learning styles. This requires concerted effort and a solid understanding of the group being assisted. As Day et al note, *'Managing this client group presents considerable challenges. Concerns have been raised about assessments of disability, staff training to deal with disabled young people, use of normalisation principles, and difficulties in providing inter-agency programs. The NYARS report (1997) found "little evidence of a clearly articulated or coordinated approach to addressing the specific needs of young people with a disability in juvenile detention"'*.⁸⁷

10.8.10 Some stakeholders suggested that the ACT system wasn't particularly effective in identifying, assessing, supporting or responding to the needs of young people with disabilities in youth justice. At the *Forging New Pathways* forum held as part of the Review,⁸⁸ participants were of the view that while the system continued to fail to appreciate the impacts of these conditions, young people were often unfairly judged for their poor performances (participants reported that these young people were often considered to be uncommitted or unwilling to engage in programs that they did not understand, or benefit from). Participants observed that, in particular, text-based and cognitive behaviour programs may be particularly ineffective for these young people. They advocated for better assessments, training and services targeted to these young people.

81 Australian Human Rights Commission, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (2008), 21.

82 Ibid, 22.

83 Ibid.

84 Department of Human Services, Victoria, *Protocol between Disability Services and Youth Justice and Guidelines for workers 2009* (2009).

85 Michael Bullis, Paul Yovanoff, Gina Mueller and Emily Havel, 'Life in the "outs" - Examination of the facility-to-community transition of incarcerated youth' (2002) 69(1) *Exceptional children*, 7-22.

86 Australian Human Rights Commission, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (2008).

87 Day et al, *Victorian Juvenile Justice Rehabilitation Review*, above n 5. 80.

88 See Appendix E for more detail about this forum.

- 10.8.11 Since the *Victorian Juvenile Justice Rehabilitation Review* was released, a number of jurisdictions have developed programs and protocols to ensure that the needs of young people with disabilities are adequately met both while in detention and in the community. Of particular note is the protocol between Disability Services and Youth Justice, and accompanying guidelines for workers, developed in 2009 by the Victorian Department of Human Services. This protocol demonstrates a commitment to ensuring that young people with disabilities in detention are provided with appropriate services, and that disability support is integrated into ongoing care.
- 10.8.12 The Commission considers that a similar protocol should be developed to articulate the ACT Government's approach to working with young people with a disability in the youth justice system. The Commission recognises the development of the *ACT Government Policy Framework for Children and Young People with a Disability and their Families (2009)* but notes that (other than a brief mention of the role of the Office for Children, Youth and Family Support), this framework does not clearly discuss how the disability and youth justice systems interact.

Recommendation 10.6: The Community Services Directorate develop a protocol to articulate the ACT Government's approach to working with young people with a disability in the youth justice system.

- 10.8.13 The Commission recognises, in particular, the service principles codified in the policy framework and recommends that these principles underpin any practice approach developed for working with young people with disabilities in detention:
- *'A child with a disability should be recognised as a child first with similar needs to other children.*
 - *A child with a disability should have access to the services, supports and education programs that are available to all children.*
 - *Children with a disability should be welcomed into their community and supported to participate in social, educational, sporting and recreational pursuits.*
 - *Children with a disability should grow up in stable, secure, loving and nurturing families.*
 - *Families have the primary responsibility for the care and protection of their child with a disability.*
 - *Agencies should recognise the expertise of families regarding their child's needs and their own lives and circumstances.*
 - *Services should be designed to recognise and build on the strengths of families and increase their resilience.*
 - *Services should be available as early as possible – early in the life of the child and early in the life of a problem*
 - *Children with a disability should be given the opportunity to participate in all aspects of interventions that affect them.'*⁸⁹
- 10.8.14 In 2008, the AHRC recommended that a 'common sense' screening tool for cognitive disabilities and/or mental health issues be developed to be used by youth workers and Indigenous services.⁹⁰ The AHRC notes in that report, that the Victorian Offending Needs Indicator for Youth assessment tool may have the capacity to identify young people with intellectual disabilities. If this is the case, this tool should be used more extensively with young people in the ACT youth justice system to identify disabilities and enable the system to respond more effectively to special needs.

10.9 Mental health, and alcohol and other drug issues

- 10.9.1 Mental health issues are some of the most pressing and influential for young people in Australia, particularly those in the youth justice system. In 2008 mental health disorders were found to be the leading cause of disability amongst young people aged 15 to 24 years,⁹¹ accounting for 50% of the burden of disease in this group of young Australians,⁹² with 26% of young people meeting diagnostic criteria for a mental health disorder (primarily substance use disorders). In 2005, the Australian Institute for Health and Welfare found that 10% of 15 to 19 year olds reported mental or behavioural problems, with mood disorders most common for females and psychological development problems most common for males.⁹³ Prevalence of these problems was higher for Aboriginal and Torres Strait Islander young people.

89 ACT Government *ACT Government Policy Framework for Children and Young People with a Disability and their Families* (2009).

90 Australian Human Rights Commission *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (2008).

91 Australian Bureau of Statistics *National Survey of Mental Health and Wellbeing: Summary of results* (2008).

92 Australian Institute of Health and Welfare, *Making progress: the health, development and well-being of Australia's children and young people* (2008).

93 *Ibid.*

10.9.2 Within the youth justice population, high rates of co-occurring disorders and a high prevalence of attentional and behavioural and substance use disorders have been found in a number of studies, as demonstrated in the results of the NSW Young People in Custody Health Survey table below:

Table 10.1: Mean Number Of Lifetime Psychological Disorders (NSW Department of Juvenile Justice)

	Young Men (n=254)		Young Women (n=39)		Aboriginal (n=140)		Non-Aboriginal (n=153)		Total (n=293)	
	n	%	n	%	n	%	n	%	N	%
(Multiple response)										
Any attention and/or behavioural disorder	172	67.7	32	82.1	105	75.0	99	64.7	204	69.6
Any alcohol and/or substance disorder	161	63.4	25	64.1	97	69.3	89	58.2	186	63.5
Any anxiety disorder	72	28.3	21	53.8	48	34.3	45	29.4	93	31.7
Any mood disorder	47	18.5	22	56.4	31	22.1	38	24.8	69	23.5
Any schizophrenia and/or psychotic disorder	12	4.7	4	10.3	11	7.9	5	3.3	16	5.5
Any psychological disorder	218	85.8	36	92.3	129	92.1	125	81.7	254	86.7
Two or more disorders	177	69.7	36	92.3	111	79.3	102	66.7	213	72.7

(Note: these figures come from the NSW Health Survey, and have not been verified by the Commission)

- 10.9.3 Studies have consistently identified high rates of co-occurring disorders and a high prevalence of attentional and behavioural and substance use disorders within the detained youth population:
- 'The relationship between mental health and criminal behavior is complex, ... but mental health issues are likely to be important criminogenic needs for some young people. The related issue of suicide risk is also especially relevant to juvenile and young adult offenders, as both younger age and mental disorders are risk factors for suicide'*⁹⁴
- 10.9.4 Participants in this Review also highlighted the high prevalence of trauma experienced by young people in the system. As reported at the *Forging New Pathways* workshop, many of the young people engaged in the youth justice system have experienced trauma and there is evidence (both anecdotal in the ACT and empirical in the wider youth justice literature) that engagement with the system can be traumatising for young people and those who work with them. Participants argued that better assessment and training was required to help the system be more informed on trauma-related issues and further consideration of ways that the system might be improved to ensure that negative impacts of incarceration were minimised and, optimally, redressed.
- 10.9.5 The interrelationship between psychological difficulties and mental health disorders and young offending is complex, but now better understood. Developmental psychologists, for example, have pointed to a period of confusion between 13 and 17 years during which 'adolescents may or may not develop skills akin to those of adults in understanding and accounting for their own behaviour'. During this period of development, it can normally be expected that a young person be able to understand and have the appropriate cognitive and emotional development to account for his or her behavior and be responsible for it. However, research shows that some young people do not, as a result of trauma and other psychosocial stressors, achieve this milestone and find it difficult to use these skills. Such theorists have suggested a causal relationship with criminal offending.⁹⁵
- 10.9.6 In their review of the Victorian youth justice system, Day et al note that there are at least three different associations between mental health problems and offending:
- *'Firstly, offending itself might play a role in causing mental health problems in young people, such as through the death of friends caused by accidents during offending in cars;*
 - *Secondly, contact with criminal justice systems may cause or exacerbate mental health problems. Nieland, McCluskie and Tait in their work in offender institutions in the UK (ages 17-21) suggest that young people may be more vulnerable emotionally to the stresses of incarceration, particularly given that victimization and bullying may be more commonplace in these settings. Peterson, Badali and Koegl ... have also reported that many young people's response to general questions*

94 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, 62.

95 Chris Lennings, *Assessment of Mental Health Issues with Young Offenders* (2003) University of Sydney.

about what it is like to be in secure care focused on 'safety concerns, problems with staff, or problems with other inmates'; and

- Thirdly, there may be some direct causal pathways between the experience of some types of symptoms (eg command hallucinations) and offending, although little of this research has been conducted with those less than 18 years old.⁹⁶

- 10.9.7 They argue that in light of these pathways, individualised assessments are warranted to determine the extent to which mental health functioning is criminogenic, arguing that it would be reasonable to suggest that alcohol and other drug misuse and a conduct disorder or related diagnoses (such as ADHD) should be considered a criminogenic need.
- 10.9.8 In determining how mental health issues (including alcohol and other drug issues) should be responded to in youth justice settings, there are a number of factors that should be considered. Firstly, the process of incarceration can influence young people's mental health. As the Institute of Child Protection Studies reports:
- 'By removing young offenders from their communities, important connections are broken or diminished sometimes leading to family dislocation and conflict. Young people may also experience prolonged periods of unemployment and disengagement from education; be more at risk of mental health concerns (Lennings, 2003), drug and alcohol problems (Prichard & Payne, 2005) and general poor health (NSW Department of Juvenile Justice, 2003). It has also been shown that when incarcerated for extended periods of time, young people may experience institutionalisation (a decreasing ability to live independently), poor self concept and negative attribution to crime (Borzycki, 2005).'*⁹⁷
- 10.9.9 Secondly, mental health issues can seriously affect the potency of rehabilitative programs, particularly when young people's ability to process information and to develop new cognitive abilities is affected. This should be considered when developing and providing services to young people.
- 10.9.10 Thirdly, young people with significant mental health needs can present considerable difficulties for services and workers supporting them. These include ensuring the safety of both the young person and those around them; the demands made upon staff and the impact on staff morale; and the difficulties in providing offence-focused interventions with this group. Day et al note, *'there are management issues related to housing, disciplinary segregation, and residential treatment and there are often disagreements about whose responsibility it is to provide services to this group'*.
- 10.9.11 Discussions about the provision of mental health and alcohol and other drug services at Bimberi can be found in Chapter 13 (health).

10.10 Young people who have experienced child abuse and neglect

- 10.10.1 There is a strong correlation between young people's experiences of child abuse and neglect, their involvement in out of home care and their participation in crime. While child abuse and neglect often occurs in the context of multiple disadvantages, *'its configuration with other risk factors is of clear and great significance'*.⁹⁸ In a longitudinal study of 41,700 children in Queensland, evidence was found of a causal relationship between maltreatment and juvenile offending.⁹⁹ Australian studies and those conducted overseas have shown that somewhere between 33 and 92%¹⁰⁰ of young people in custody have experienced some form of maltreatment, with young women in particular being more likely to have experienced childhood sexual assault (see further the discussion of the particular needs of young women above).¹⁰¹ Young people who commit more serious offences are more likely to have experienced child abuse and it is more likely that this abuse was serious and ongoing.¹⁰²
- 10.10.2 The needs of these young people are complex and wide ranging, with rates of mental health concerns amongst this group being as high as 80%. Young people who experience abuse in the early years are at greater risk of behavioural problems and criminal activity. As Melzak notes:
- 'The experience of potential violence in a child's first five years may lead to violent thoughts and behaviour in adult life if the child has no opportunity to experience a positive secure relationship.'*¹⁰³

96 Day et al, *Victorian Juvenile Justice Rehabilitation Review*, above n.5, 78.

97 Moore et al, *Lost in Transition*, above n 31, 21.

98 Caroline Day, Pam Hibbert, Spike Cadman, *A Literature Review into Children Abused and/ or Neglected Prior Custody* (2008), 5.

99 Anna Stewart, Susan Dennison and Elissa Waterson, 'Pathways from child maltreatment to juvenile offending' (2002) *Australian Institute of Criminology Trends and Issues in crime and criminal justice* No. 241.

100 See, for example: Katherine Hamilton, Louise Falshaw and Kevin Browne, 'The Link between Recurrent Maltreatment and Offending Behaviour' (2002) *International Journal of Offender Therapy and Comparative Criminology*, 75-94.

101 Indig et al, 2009 NSW Young People in Custody Health Survey, above n. 45, 150.

102 Gwyneth Boswell, 'The backgrounds of violent young offenders' in Ved Varma (ed), *Violence in Children and Adolescents* (1997), 22-36.

103 Sheila Melzak, 'The emotional impact of violence on children' in Ved Varma (ed) *Violence in Children and Adolescents* (1997), 2-21.

- 10.10.3 These issues are even more pronounced for young women. Widom, for example, showed in 2000 that girls in a sample of young offenders who had been abused or neglected in childhood were twice as likely to be arrested while adolescents, twice as likely to be arrested as adults and 2.4 times more likely to be arrested for violent crimes than non-abused and neglected girls. Importantly, Widom notes that 70% of young women in the abused and neglected sample had not gone on to offend, so the relationship between the two factors was considered neither 'inevitable nor deterministic' but it was an instrumental factor for those young people who did go on to offend.¹⁰⁴
- 10.10.4 Not surprisingly, there is also a recognised relationship between out of home care experience and juvenile offending. In one Victorian study, for example, 88% of young people sentenced to imprisonment by the children's court in 2001 had been subject to an average of 4.6 notifications to a child protection agency and 86% had been in out of home care. Over half of these young people had had more than five care placements.¹⁰⁵ Stewart et al found that maltreated children who were placed in out of home care were twice as likely to offend as maltreated children who remained in their home, and noted that removal often reflected experiences of more serious or ongoing abuse.¹⁰⁶
- 10.10.5 One of the reasons that many young people who have experienced abuse and are estranged from their families are over-represented in custody is a lack of available and appropriate accommodation where young people can be remanded.¹⁰⁷ Without stable accommodation, young people may be remanded until trial, even when a custodial sentence is an unlikely outcome. As the Wood Inquiry noted:
- 'Coming within the juvenile justice or criminal justice system should not exclude a young offender from long-term services from [child protection agencies] and other human service agencies. Nor should a shortage of refuges or other forms of accommodation result in young people who cannot live safely with their families, being remanded in custody unnecessarily, pending trial.'*¹⁰⁸
- 10.10.6 The Australia Law Reform Commission also recognised these significant issues, observing:
- 'The Commission acknowledges the serious community concerns for many young people who traverse the child protection and juvenile justice divide. The lack of suitable accommodation and other support services, and the consequent remand in custody of increasing numbers of young people, undermines established juvenile justice principles of diversion and rehabilitation. Of particular concern are young people who are homeless as a result of family dysfunction and violence.'*¹⁰⁹
- 10.10.7 Young people who are part of the care system who are incarcerated present with a number of significant issues that must be acknowledged when developing supports to assist them. Boswell, for example, found that almost two-thirds of young people who were incarcerated had experienced significant grief and loss. Day et al argue that these experiences are more significant and more likely for those who had been removed from their families as children.¹¹⁰ Other studies have shown high rates of post traumatic disorder, suicidal ideation and poor mental health outcomes generally.
- 10.10.8 In supporting these young people, it should be recognised that past experiences of exploitation and rejection by significant adults can affect their willingness to connect with positive adults and to learn new ways of dealing with stressors.¹¹¹ Trauma has also been shown to affect the efficacy of a number of treatments, and social and emotional pain can affect the capacity of young people to change criminal attitudes and behaviours. There is growing evidence to suggest that unless the legacy of childhood abuse and neglect is fully appreciated and responded to within youth justice systems, positive outcomes (including the rehabilitation of young offenders) are likely to be limited.¹¹²
- 10.10.9 Young people who are engaged in both care and protection and youth justice systems are some of the most vulnerable and disadvantaged of all young people, and they are at particular risk when leaving these systems. In 2008, the CREATE Foundation found that 19.2% of young people in their survey who were transitioning from care had been involved with the youth justice system.¹¹³ This was often due to issues related to poverty, poor accommodation options and limited formal and informal support networks. As Snyder found:
- 'These juveniles have been under the control of the ... system for most of their lives. They rarely have a stable family unit. Many have been unable to build bonds that will enable them to thrive independently in their communities. Many have not learned*

104 Cathy Widom, 'Post traumatic Stress Disorder in Abused and Neglected Children Grown Up' (1989) *American Journal of Psychiatry General Research*, 156.

105 Victorian Department of Human Services, *An Integrated Strategy for Child Protection and Placement Services* (2002), 52-53

106 Stewart et al, 'Pathways from child maltreatment to juvenile offending', above n 100,5.

107 James Wood, *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (2008)

108 Ibid.

109 The Australian Law Reform Commission, *Family Violence – A National Legal Response* (2010) ALRC Report 114.

110 Day et al, *A Literature Review into Children Abused and / or Neglected Prior Custody*, above n.99, 30.

111 John Seita and Larry Brendtro, *Kids who outwit adults* (2002).

112 Larry Brendtro, Martin Mitchell and Herman McCall *Deep Brain Learning: Pathways to Potential with Challenging Youth* (2009).

113 Joseph McDowall, *Report Card: Transitioning from Care* (2008) CREATE Foundation.

the skills needed to live independently (e.g., driving a car, managing their own finances). These youth have relatively high levels of educational failure, unemployment, drug use, and law-violating behaviour. Many fail to thrive during their transition into adulthood, due at least in part to the lack of official or unofficial support systems. At age 18, many are sent out on their own to make their ways in the world, without the financial or emotional safety net of a family or social programs.¹¹⁴

- 10.10.10 Young people who are transitioning from both care and the youth justice system are particularly vulnerable, as they often lack the positive influence and support of parents, extended family members and the broader informal support networks which families may enable. Transitioning planning that helps young people create new support networks is essential, as Stein highlights, it is 'very important to these young people that somebody [is] there for them, that they [are] not abandoned'.¹¹⁵

Current services and supports for young people in youth justice

- 10.10.11 Although the links between childhood experiences of abuse and neglect, engagement in care and protection systems and youth offending are well recognised, and despite the co-location of Care and Protection and Community Youth Justice in the ACT within the same Directorate, there is limited evidence to suggest that this group of young people are well understood, assessed or supported within the current system.
- 10.10.12 The Commission was unable, for example, to obtain statistics on the prevalence of young people at Bimberi who were also involved in the ACT care and protection system nor those related to the prevalence of childhood experiences of abuse or neglect. The Commission was also concerned by reports of ongoing issues related to the case management of young people engaged in both the care and protection and youth justice systems. Both care and protection and youth justice staff report limited cross-system coordination and difficulties in maintaining collegial trust and respect and shared case planning. It appears that communication between the two areas can sometimes be problematic even though Community Youth Justice and Care and Protection share premises. This is despite a number of previous calls for more streamlined system-wide support mechanisms to be put in place for young people traversing the two systems.¹¹⁶
- 10.10.13 The Commission considers that there is a need for greater clarity regarding the responsibilities of Youth Justice and Care and Protection case workers, and the way in which they can work together in the best interests of young people involved in both systems. In Chapter 9 (case management) the Commission recommends that CSD develop a Memorandum of Understanding that clearly articulates how relevant services (including Bimberi, community youth justice, Turnaround and care and protection services) work together to support implementation of a young person's case plan.
- 10.10.14 The Commission also notes the need for improved data collection in relation to young people in the youth justice system, including data relating to the prevalence of young people involved in the care and protection system. Recommendations relating to data collection and record keeping are made in Chapter 6 (evidence based).

114 Howard Snyder, 'An empirical portrait of the youth reentry population' (2004) 2 *Youth Violence and Juvenile Justice*.

115 Mark Stein, *Resilience and young people leaving care: Overcoming the odds* (2005).

116 See eg, ACT Legislative Assembly Standing Committee on Community Services and Social Equity 'One-way roads out of Quamby: Transition options for young people exiting juvenile detention in the ACT' (2004) at 27.